



UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
CHICAGO REGIONAL OFFICE

224 South Michigan Avenue, Suite 445 • Chicago, Illinois 60604-2505  
Tel. (312) 886-3465 Fax. (312) 886-5977

April 19, 2013

Charles L. Burgett  
P.O. Box 24826  
Kansas City, MO 64131

Re: Freedom of Information Act Request

Dear Mr. Burgett:

This is in response to your Freedom of Information Act (FOIA) request that you submitted to the General Counsel's Office on April 4, 2013. You asked for a copy of case file in Case No. DE-CO-13-0026. Your request has been referred to the Region for response as the Region maintains the subject case file.

Your request is granted in part and denied in part. We will provide copies of the formal papers (charge, opening letter, and dismissal letter) along with the statement and documents provided to the Region by your client Ms. Taylor. As you may already have copies of these materials, we are not enclosing them. In the event you want us to provide copies of these materials, please let us know and we will mail them to you.

The remaining documents in the case file are privileged from disclosure under one or more of the FOIA Exemptions.

The case file contain routine administrative materials such as the ULP data entry form and case log that are exempt from disclosure under FOIA Exemption 2 as internal trivial administrative material of no genuine public interest. *See Schiller v. NLRB*, 964 F.2d 1205 (D.C. Cir. 1992).

The case file also contains information concerning the Region's deliberations on the merits of Ms. Taylor's charge. This material is exempt from disclosure by Exemption 5 of FOIA.

Exemption 5 of FOIA protects from disclosure intra-agency documents that are not available by law to a party in litigation with the agency; i.e. documents not discloseable in civil litigation. Exemption 5 of FOIA includes the deliberative process privilege. *NLRB v. Sears Roebuck*, 421 US 132,151 (1975). The deliberative process privilege protects from disclosure information pertaining to the Region's deliberations on the merits of your charge. Accordingly, this material is being withheld pursuant to the deliberative process privilege of Exemption 5.

Exemption 5 of FOIA also includes the attorney work-product privilege. This privilege protects from disclosure documents prepared by or for an attorney in anticipation of litigation. The attorney work-product privilege is designed to shield attorney preparatory work from scrutiny. *Hickman v. Taylor*, 329 US 495 (1947) and *Martin v. Office of Special Counsel*, 819 F.2d 1181 (D.C. Cir. 1987). Accordingly, information pertaining to the Region's determination concerning the appropriateness of further proceedings on your charge under Section 7118 of the Statute is exempt from release under the attorney work-product privilege.

Finally, the file contains information submitted to the Region by the charged party. The

information that the charged party submitted to the Region is privileged from disclosure under Exemptions 7(A) and 7(D) of FOIA.

Exemption 7(A) of the FOIA allows an agency to withhold records included in a law enforcement file when disclosure "could reasonably be expected to interfere with enforcement proceedings". In the investigation of unfair labor practice cases the Authority obtains much information from individuals and parties who would be reluctant or would refuse to supply such information if it were routinely discloseable pursuant to a FOIA request. In administering the Statute, the Authority must be able to obtain in its investigation of charges all potentially relevant information. The protection of the identity of individuals and the substance of the information they submit to the Authority during an official investigation is critical to assuring the Authority's continuing ability to obtain all relevant and necessary information.

If the Authority were forced to reveal information submitted or obtained during the investigation of the case, it would substantially deter the voluntary cooperation of witnesses, hinder obtaining information from all potential sources, and, consequently, substantially interfere with present and future enforcement proceedings. Accordingly, Exemption 7(A) protects this information from disclosure.

Exemption 7(D) permits an agency to withhold from disclosure records that "could reasonably be expected to disclose the identity of a confidential source ..." The information provided to the Region by the charged party was provided under a specific assurance of confidentiality, 5 C.F.R. § 2423.8(d), and is therefore exempt from disclosure.

I am responsible for this FOIA determination. In accordance with Section 2411.10 of the Authority's regulations, 5 C.F.R. § 2411.10, you may obtain review of this determination by filing a written appeal with the General Counsel of the FLRA at 1400 K Street NW, Second Floor, Washington, DC 20424-0001 within 30 days after you receive this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Sutton", with a long horizontal flourish extending to the right.

Peter A. Sutton  
Regional Director

Richard Zorn, FOIA Officer  
Office of the General Counsel  
Federal Labor Relations Authority  
1400 K Street, NW, Second Floor  
Washington, DC 20424-0001

RE: Case No. DE-CO-13-0026

General Counsel;

I request an extension until May 17, 2013 to file an appeal. I am requesting a copy of my client's file under the Freedom of Information Act. If the request is processed timely, I will receive the information and prepare the appeal by May 17, 2013.

Thank you for your consideration of this matter.

Charles L. Burgett  
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816-521-0339  
[burgc1@yahoo.com](mailto:burgc1@yahoo.com)  
Representative for Janet Y. Taylor